

Quintin G. Shammam, Esq. (SBN. 246926)
LAW OFFICES OF QUINTIN G. SHAMMAM
2221 Camino Del Rio South, Ste. 207
San Diego, California 92108
Tel: (619) 444-0001
Fax: (619) 501-1119

Attorney for Plaintiff
 RITA ASMAR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RITA ASMAR,

Plaintiff,

vs.

COMMERCIAL RECOVERY
 SYSTEMS, INC.,

Defendant.

Case No.: '13CV0860 CAB KSC

Complaint for Damages

Jury Trial Demanded

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
3. Rita Asmar, ("Plaintiff"), through her attorney, brings this action to challenge the actions of Commercial Recovery Systems, Inc., ("Defendant"), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.
5. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were knowing and intentional, and that Defendant did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
8. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

9. Because Defendant does business within the State of California, County of San Diego, personal jurisdiction is established.

10. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

11. Plaintiff is a natural person who resides in the City of Jamul, County of San Diego, State of California and is a "consumer" or a "person" affected by a violation of the FDCPA, as those terms are defined by 15 U.S.C. § 1692a(3) and 1692k.

12. Defendant is a Texas Corporation who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another is therefore a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

13. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

14. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

15. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

16. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

17. At all times relevant, Defendant conducted business within the State of California.

18. Sometime before February 22, 2013, Plaintiff allegedly incurred a financial obligations that were primarily for personal, family or household purposes, that went into default for

- 1 late payment, and was therefore an alleged "debt" as that term is defined by 15 U.S.C. §
 2 1692a(5), namely, a First Equity Bank credit card ("Debt").
- 3 19. These alleged obligations were money, property, or their equivalent, which is due or
 4 owing, or alleged to be due or owing, from a natural person to another person and are
 5 therefore a "debt" as that term is defined by California Civil Code § 1788.2(d), and a
 6 "consumer debt" as that term is defined by California Civil Code § 1788.2(f).
- 7 20. Before February 22, 2013 Plaintiff allegedly fell behind in the payments allegedly owed
 8 on the alleged Debt. Plaintiff currently takes the position that this Debt is invalid.
- 9 21. Subsequently, but before February 22, 2013, the Debt was assigned, placed, or otherwise
 10 transferred, to Defendant for collection.
- 11 22. On February 22, 2013, a representative of Defendant, Janice Cox, telephoned Plaintiff
 12 and told Plaintiff that they would be reporting the Debt and all her credit cards would be
 13 closed. Ms. Cox also told Plaintiff that they would be levying her account, garnishing her
 14 wages and filing a "TBD" that week. At the time Ms. Cox made these threats, Defendant
 15 did not have a judgment against Plaintiff.
- 16 23. The telephone call to Plaintiff was a "communication" as that term is defined by 15
 17 U.S.C. § 1692a(2).
- 18 24. The telephone call was "debt collection" as Cal. Civ. Code 1788.2(b) defines that phrase.
- 19 25. Through this conduct, Defendant caused any conduct the natural consequence of which is
 20 to harass, oppress, or abuse any person. Consequently, Defendant violated 15 U.S.C. §
 21 1692d.
- 22 26. Through this conduct, Defendant caused the phone ring or engaged any person in
 23 telephone conversations repeatedly. Consequently, Defendant violated 15 U.S.C. §
 24 1692d(5).
- 25 27. Through this conduct, Defendant used false, deceptive and misleading representations in
 26 connection with debt collection. Consequently, Defendant violated 15 U.S.C. § 1692e.
- 27
 28

28. Through this conduct, Defendant mischaracterized the legal status of the Debt. Consequently, Defendant violated 15 U.S.C. § 1692e(1).

29. Through this conduct, Defendant threatened to take action that cannot be legally taken. Consequently, Defendant violated 15 U.S.C. § 1692e(5).

30. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.

31. Because Defendant's actions violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

32. Plaintiff never received the notice required by 15 U.S.C. § 1692g within five days of the initial communication with Plaintiff. On information and belief, Defendant never sent the notice required by 15 U.S.C. § 1692g.

33. Through this omission, Defendant violated 15 U.S.C. § 1692g.

34. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

35. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

36. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

37. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to

1 \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and
2 costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

3 **COUNT II**

4 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)**

5 **CAL. CIV. CODE §§ 1788-1788.32**

6 38. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

7 39. The foregoing acts and omissions constitute numerous and multiple violations of the
8 RFDCPA, including but not limited to each and every one of the above-cited provisions
9 of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32.

10 40. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual
11 damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or
12 willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
13 and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from
14 Defendant.

15 **TRIAL BY JURY**

16 41. Plaintiff is entitled to and hereby respectfully demands a trial by jury. US Const. amend.
17 7. Fed.R.Civ.P. 38.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be
20 awarded damages from Defendant, as follows:

- 21 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 22 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 23 • An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §
24 1692k(a)(3);
- 25 • An award of actual damages pursuant to California Civil Code § 1788.30(a);
- 26 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);

- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c);
- Special, general, compensatory and punitive damages;
- For such other relief as may be just and proper.

Dated: 4/9/2013

By: /s/ Quintin G. Shammam
Quintin G. Shammam, Attorney for Plaintiff
RITA ASMAR

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RITA ASMAR

DEFENDANTS

ASSET ACCEPTANCE, LLC

(b) County of Residence of First Listed Plaintiff SAN DIEGO, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant DALLAS, TX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'13CV0860 CAB KSC

(c) Attorney's (Firm Name, Address, and Telephone Number)

Quintin Shammam, 2221 Camino Del Rio S, Ste 207, San Diego, CA 92108 619-444-0001

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

FDCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 04/09/2013

SIGNATURE OF ATTORNEY OF RECORD
s/ Quintin G. Shammam

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____